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GOVERNMENT OF KERALA

Law (Legislation-C) Department

NOTIFICATION

No. 8843-Leg.-C3|85|Law. *Dated, Trivandrum, 16th August, 1985| 25th Sravana, 1907.*

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the President on the 12th day of August, 1985.

By order of the Governor,

P. P. MATHAI,
Special Secretary (Law).

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ACT 21 OF 1985

THE KERALA MOTOR TRANSPORT WORKERS' WELFARE FUND ACT, 1985

An Act to provide for the constitution of a Fund to promote the welfare of motor transport workers in the State of Kerala.

Preamble.—WHEREAS it is expedient to provide for the constitution of a Fund to promote the welfare of motor transport workers in the State of Kerala;

BE it enacted in the Thirty-sixth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Motor Transport Workers' Welfare Fund Act, 1985.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 27th day of June, 1985.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Board" means the Kerala Motor Transport Workers' Welfare Fund Board constituted under section 6;

(b) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (1) of section 7;

(c) "contribution" means a contribution payable in respect of a member under the scheme;

(d) "employee" means a person who is employed for wages in a motor transport undertaking directly or through an agency to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time keeper, watchman or attendant;

(e) "employer" means, in relation to any motor transport undertaking, the person who, or the authority which, has the ultimate control over the affairs of the motor transport undertaking, and where the said affairs are entrusted to any other person, whether called a manager, managing director, managing agent or by any other name, such other person;

(f) "Fund" means the Kerala Motor Transport Workers' Welfare Fund established under the scheme;

(g) "member" means a member of the Fund and includes any person eligible to become a member of the Fund;

(h) "motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "scheme" means the scheme framed under this Act;

(k) "wages" means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) overtime allowance, bonus and commission;

(l) all other words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939 (Central Act 4 of 1939), shall have the meanings respectively assigned to them in that Act.

3. *Motor Transport Workers' Welfare Fund.*—(1) The Government may, by notification in the Gazette, frame a scheme to be called the Kerala Motor Transport Workers' Welfare Fund Scheme for the establishment of a Fund under this Act for employees and there shall be established, as soon as may be after the framing of the scheme, a Fund in accordance with the provisions of this Act and the scheme.

(2) The Fund shall vest in, and be administered by, the Board.

(3) Subject to the provisions of this Act, the scheme may provide for all or any of the matters specified in the Schedule.

4. *Contributions to the Fund.*—(1) The contribution which shall be paid by the employer to the Fund shall be eight per cent of the wages for the time being payable to each of the employees and employees' contribution shall be equal to the contribution payable by the employer in respect of him:

Provided that nothing in this sub-section shall apply to a motor transport undertaking to which the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act 19 of 1952), apply.

(2) The employer shall, in addition to the contribution payable under sub-section (1), contribute to the Fund as gratuity an amount equal to five per cent of the wages for the time being payable to each of the employees:

Provided that nothing in this sub-section shall apply to a motor transport undertaking to which the provisions of the Payment of Gratuity Act, 1972 (Central Act 39 of 1972), apply.

(3) Where the amount of any contribution payable under this Act involves a fraction of a rupee, such fraction shall be rounded off to the nearest rupee, half of a rupee or quarter of a rupee.

5. *Modification of scheme.*—(1) The Government may, by notification in the Gazette, add to, amend or vary the scheme either prospectively or retrospectively.

(2) Every notification under sub-section (1) shall be laid, as soon as may be after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the notification or decides that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

6. *Constitution of Board.*—(1) The Government may, by notification in the Gazette, constitute with effect from such date as may be specified in such notification a Board to be called the Kerala Motor Transport Workers' Welfare Fund Board for the administration of the Fund and to supervise or carry out the activities financed from the Fund.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of such number of Directors as may be appointed by the Government and they shall be chosen in such manner as may be provided for in the scheme:

Provided that the Board shall include an equal number of Directors representing the Government, the employers and the employees.

(4) One of the Directors of the Board shall be appointed by the Government to be its Chairman.

(5) The Government shall publish the names of all the Directors of the Board in the Gazette.

(6) The Board shall administer the Fund in such manner as may be specified in the scheme.

(7) The Board may, with the previous approval of the Government, delegate to its Chairman or to the Chief Executive Officer or to any officer appointed under sub-section (1) of section 7 such of its powers and functions under this Act or the scheme as it may consider necessary for the efficient administration of the Fund, subject to such restrictions and conditions, if any, as it may specify:

Provided that no delegation shall be made under this sub-section unless all the members present support such delegation.

7. *Appointment of Officers.*—(1) The Government may appoint a Chief Executive Officer and such number of other officers and staff as they consider necessary to assist the Board in the discharge of its functions and duties under this Act.

(2) The Chief Executive Officer and the other officers appointed under sub-section (1) shall exercise such powers and discharge such duties as may be prescribed.

(3) The method of recruitment, salary and allowances, discipline and other conditions of service of the Chief Executive Officer and the other officers and staff appointed under sub-section (1) shall be such as may be prescribed.

8. *Determination of amount due from employers.*—(1) The Chief Executive Officer or any other officer appointed under sub-section (1) of section 7 authorised by him in this behalf may, by order, determine the amount due from any employer under the provisions of this Act or of the scheme and for this purpose, may conduct such inquiry as he may deem necessary.

(2) Any officer conducting the inquiry under sub-section (1) shal for the purposes of such inquiry, have the same powers as are vested in a civil

court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses.

(3) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and for the purposes of section 196 of that code.

(4) No order determining the amount due from any employer shall be made under sub-section (1) unless the employer has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by an order under sub-section (1) may, within sixty days from the date of receipt of the order, prefer an appeal to the Government or any other authority as may be specified by the Government in this behalf and the decision of the Government or of such authority on such appeal shall be final.

9. *Provisional assessment of contribution.*—(1) Every employer shall, pending determination under section 8 of the amount due from him, pay every month by way of advance contribution an amount equivalent to one-twelfth of the amount payable annually in respect of his motor transport undertaking, according to the latest determination under the said section or, if the amount due from him has not been previously determined under the said section, an amount equivalent to one-twelfth of the amount which, according to the assessment of the employer is payable by him annually in respect of his motor transport undertaking.

(2) The advance contribution for a month shall become payable on or before the 5th day of the succeeding month.

(3) Where the advance contribution is not paid on or before the due date, any officer appointed under sub-section (1) of section 7 authorised by the Chief Executive Officer in this behalf shall issue a notice to the defaulter showing the amount of arrears, and if the amount is not paid within seven days of the receipt of such notice, it may be recovered in the same manner as arrears of public revenue due on land.

(4) The amount paid under this section for an year shall be adjusted against the amount determined under section 8 for that year.

10. *Mode of recovery of moneys due from employers.*—Any amount due from the employer in pursuance of the provisions of this Act or the scheme, other than an amount payable under sub-section (1) of section 9, may, if the amount is in arrear, be recovered together with interest thereon at the rate of nine per cent per annum in the same manner as an arrear of public revenue due on land.

11. *Protection against attachment.*—(1) The amount standing to the credit of any member in the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member, and no receiver appointed under the Insolvency Act, 1955 (II of 1956), shall be entitled to or have any claim on any such amount.

(2) Any amount standing to the credit of a member in the Fund at the time of his death and payable to his nominee under the scheme shall, subject to any deduction authorised by the scheme, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member.

12. *Priority of payment of contributions over other debts.*—Where any employer is adjudicated insolvent or the employer is a company and an order for winding up of such company is made, the amount due from the employer under this Act or the scheme shall, where the liability therefore has accrued before the order for adjudication or winding up is made, be deemed to be included among the debts which under section 64 of the Insolvency Act, 1955 (II of 1956), or under section 530 of the Companies Act, 1956 (Central Act 1 of 1956), are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

13. *Employer not to reduce wages etc.*—No employer shall by reason only of his liability for the payment of any contribution to the Fund, reduce, whether directly or indirectly, the wages of any employee to whom the scheme applies or the total quantum of benefits to which the employee is entitled under the terms of his employment express or implied.

14. *Directors of Board etc., to be public servants.*—Every Director of the Board, the Chief Executive Officer and every officer appointed under sub-section (i) of section 7 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

15. *Penalties.*—(1) Whoever, for the purpose of avoiding any payment to be made by him under this Act or under the scheme or of enabling any other person to avoid any payment to be made under this Act or the scheme, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes or makes default in complying with any of the provisions of this Act or of the scheme shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(3) No court inferior to that of a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

(4) No court shall take cognisance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Chief Executive Officer.

16. *Enhanced punishment for default in payment of employees' contributions already deducted.*—(1) Whoever makes default in the payment of the employees' share of the contribution to the Fund after having deducted it from the wages of the employees in accordance with the provisions of this Act or the scheme, shall be punishable with imprisonment for a term which may extend to one year, but which shall not be less than three months, and with fine which may extend to four thousand rupees:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), an offence under sub-section (1) shall be cognizable.

17. *Enhanced punishment for second or subsequent offence.*—Whoever, having been convicted by a court of an offence punishable under this Act, again commits the same offence shall be punishable for every such subsequent offence with imprisonment for a term which may extend to one year, but which shall not be less than three months, and with fine which may extend to four thousand rupees:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

18. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

19. *Directions by Government.*—(1) The Government may, after consultation with the Board, give to the Board general instructions to be followed by the Board.

(2) In the exercise of its powers and performance of its duties under this Act, the Board shall not depart from any general instructions issued under sub-section (1), except with the previous permission of the Government.

20. *Power to order inquiry.*—(1) The Government may, at any time, appoint any person to inquire into the working of the Board and to submit a report to the Government.

(2) The Board shall give the person so appointed all facilities for the proper conduct of the inquiry and furnish to him such documents, accounts and information in the possession of the Board as he may require.

21. *Power to supersede the Board.*—(1) If, on consideration of the report under section 20 or otherwise, the Government are of opinion that the Board has persistently made default in the performance of the duties imposed on it by or under the provisions of this Act or the scheme or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months as may be specified in the notification:

Provided that, before issuing a notification under this sub-section, the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1),—

(a) all the Directors of the Board shall, as from the date of such publication, vacate their offices as such Directors;

(b) all the powers and duties, which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such officer or officers as may be specified in the notification;

(c) all funds and other properties vested in the Board shall, during the period of supersession, vest in the Government.

(3) On the expiration of the period of supersession the Government shall reconstitute the Board in the manner provided in section 6.

22. *Protection of action taken in good faith.*—No suit or other legal proceeding shall lie against any Director of the Board or the Chief Executive Officer or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rule made thereunder or under the scheme.

23. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the scheme required to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Executive Officer or any other officer appointed under sub-section (i) of section 7.

24. *Special provisions for transfer and vesting of welfare fund established by custom or agreement.*—All welfare funds established either by custom or agreement before the date of commencement of this Act and standing to the credit of the employees on such date shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument, stand transferred to, and vest in the Fund established under section 3 and shall be credited to the accounts of the employees entitled thereto in the Fund.

25. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

26. *Repeal and Saving.*—(1) The Kerala Motor Transport Workers' Welfare Fund Ordinance, 1985 (38 of 1985), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under

SCHEDULE

[*See* section 3 (3)]

Matters for which provision may be made in the scheme:

1. The time and manner in which contributions shall be made to the Fund by employers and by, or on behalf of employees (whether employed directly, or through an agency), the contributions which an employee may make under section 4 and the manner in which such contributions may be recovered.

2. The payment by the employer of such sum of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which such payment shall be made.

3. The constitution of any committee for assisting the Board.

4. The manner in which account shall be kept, the investment of money belonging to the Fund in accordance with any directions issued or conditions specified by the Government, the preparation of the budget, the audit of accounts and the submission of reports to the Government.

5. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.

6. The fixation by the Government in consultation with the Board of the rate of interest payable to members.

7. The form in which an employee shall furnish particulars about himself and his family whenever required.

8. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.

9. The registers and records to be maintained with respect to employees and the returns to be furnished by the employers or agencies.

10. The form or design of any identity card, token or disc for the purpose of identifying any employee, and for issue, custody and replacement thereof.

11. The fees to be levied for any of the purposes specified in this schedule.

12. The conditions under which a member may be permitted to pay premia on life insurance from the Fund.

13. The further powers, if any, which may be exercised by the officers appointed under this Act.

14. The manner in which the Directors of the Board shall be chosen and appointed.

15. The manner in which any welfare fund vested under section 24 is to be brought and credited to the accounts of the employees entitled thereto in the Fund.

16. The rate of gratuity payable to members and the conditions for such payment.

17. The conditions under which any amount due to the Board may be written off.

18. Any other matter which is to be provided for in the scheme or which may be necessary or proper for the purpose of implementing the scheme.